



NEW YORK
REGIONAL OFFICE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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December 22, 2022

By ECF

Honorable Evelyn Padin
United States District Judge
Martin Luther King Building & U.S. Courthouse
50 Walnut Street Room 4015
Newark, NJ 07101

RE: *SEC v. National Realty Investment Advisors, LLC, et al.*,
No. 2:22-cv-06066-EP-ESK

Dear Judge Padin:

Plaintiff Securities and Exchange Commission ("SEC") respectfully writes to set forth its position on the motion by the United States Attorney for the District of New Jersey ("United States") to stay this case pending the resolution of parallel criminal proceedings against certain Defendants in this case. (ECF 21.) As noted by the United States, the SEC takes no position with respect to the motion. (ECF 21-1 at 7.) However, the SEC respectfully requests that the Court permit it to continue to attempt to serve Defendant Rey Grabato II ("Grabato") during the pendency of any stay. The United States has indicated that it does not object to this condition.

The SEC has not yet been able to serve Grabato and believes that he is located in the Philippines. Federal Rule of Civil Procedure 4(m)'s 90-day limit to serve a defendant within the United States therefore does not apply here.

At least one United States Court of Appeals has held that a court does not have personal jurisdiction over a defendant who has not been served, that a stay order therefore does not apply to an unserved defendant, and that the plaintiff's obligation to serve the defendant continues to run during a stay. *Friedman v. Estate of Presser*, 929 F.2d 1151, 1157 (6th Cir. 1991). The SEC thus respectfully requests that, if the Court stays this action, it permit the SEC to continue to try to serve Grabato, as this Court has permitted before. *See Peterson v. Matlock*, Civil Action No. 11-2594 (FLW), 2011 WL 5416571, at *5 (D.N.J. Nov. 7, 2011) (staying case "subject to the Unserved Defendants being served").

Respectfully submitted,

/s/ Jason Schall

Jason Schall
Trial Counsel

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cc: All counsel of record (via ECF)